

# **FRAUD ASSESSMENT COMMISSION**

Summary Meeting Minutes  
June 20, 2006  
Sacramento, California

Chairperson Bill Zachry opened the meeting by outlining the agenda items and noticing the attendees that one of the Commissioner's had a family emergency and would be trying to teleconference later in the meeting.

Chairperson Zachry introduced and welcomed the newly appointed member of the Fraud Assessment Commission, Mr. Jiles Smith. Mr. Smith is the Risk Manager for the Riverside Transit Agency and has been very active with the Employer's Fraud Task Force. While serving on the Fraud Assessment Commission, Mr. Smith will represent Self-Insureds.

Also, the Chairperson acknowledged that he would now represent the Self-Insured as well as taking the place of former Fraud Assessment Commission member, George Fenimore.

The Chairperson remarked that, historically, one of the issues raised was how to more positively involve the self-insured community in identifying and reporting fraud. Mr. Phil Millhollen, Executive Director for California Self-Insurers Association (CSIA), addressed the FAC.

Mr. Millhollen noted regarding outreach to self-insurers from the FAC, a better alternative would be to work through Mark Johnson at the Office of Self-Insurance Plans. Additionally, there are publications from CSIA that the FAC is welcome to use to submit articles or meeting agendas. Also, Mr. Millhollen extended an invitation to the FAC for a speaker at the Fall conference to be held on October 6, 2006 in San Francisco.

Chairperson Zachry thanked Mr. Millhollen for attending the meeting and the FAC will extend an invitation to Mr. Johnson to attend the next meeting to address possible ways to reach out to the self-insured community.

Commissioner Gallagher raised the issue of the importance of acknowledging anti-fraud efforts through press releases and asked that the topic be open for discussion.

Rachel Williams addressed the FAC and began to describe her personal frustration of not receiving benefits and not being able to get surgery.

Chairperson Zachry remarked that this was not the time for public comment and that Ms. Williams was not addressing the issue being raised.

Commissioner Gallagher commented that the discussion at this time is when we have something for which it is determined charges are going to be made, there is an arrest and subsequent conviction. The question is whether the release of this information serves to deter future criminal activity.

Commissioner Gallagher again remarked that the issue is the press release and whether anyone feels we don't want to give the credit where it's due.

Gary Fagan, San Bernardino Supervising Deputy District Attorney commented, "You do not have permission to videotape me, "thank you," stated Mr. Fagan. Prosecutors are bound by California State Bar rules on pre-trial publicity, which are more restrictive than those rules that confine police agencies. Mr. Fagan noted that at the time of the arrest, district attorneys are not permitted to talk about facts or anything that could influence a jury that may hear the case.

Chairperson Zachry remarked on the update of the Research Proposal about how much fraud exists and the nature and extent of fraud in the workers' compensation system. The Commission has been working closely with the Department of Insurance on this process and after reviewing the proposals submitted on July 13 and 14, the study team will present the information to the whole FAC to vote on the final proposal.

Bureau Chief Rick Plein reported on the development of a database to be utilized for statistical reporting by district attorneys. Each year district attorneys are required to report statistics to the Fraud Division that are submitted by the department to the Legislature and the Governor.

The Fraud Assessment Commission provided funding for the design and implementation of the new database and the department's Information Technology Unit created a process so district attorneys can access a website to provide information. The project will begin on July 1, 2006.

Commission member Gallagher raised the issue as to whether the database will provide on-line help for the district attorneys.

Bureau Chief Plein noted that the Department is setting up e-mail addresses in the Local Assistance Unit for that purpose.

Dominic Dugo San Diego County Deputy District Attorney, raised the issue that this database currently is for the workers' compensation program and queried whether this could be used in the auto program as well.

Bureau Chief Plein commented that the department's long range goal was to be able to provide for the auto insurance fraud program as well.

Enforcement Branch Deputy Commissioner Banda provided an update on Special Investigative Unit (SIU) audits and new regulations. The department promulgated new

SIU regulations for the insurance carriers. “If you have a certificate of authority to sell insurance in the state of California, you are required to have an SIU within your company. Annually, the company is required to report to the Fraud Division on how they review, train and report suspected fraud,” reported Deputy Commissioner Banda. He continued, “The insurance carrier must maintain a continuous SIU within the company. The second important component is training. There are 3 levels of training required. First level employees within 90 days are supposed to be given an orientation on the SIU. Secondly, there must be training for integral anti-fraud personnel, such as underwriters and claims examiners. Thirdly, the SIU itself requires very specific and intense training to assist in the identification of fraud within the system.” Presently, the department’s SIU has conducted 14 audits of insurance companies.

Vanessa Himelblau, Legal Counsel with the Department, shared information to assist the new FAC member. The Workers’ Compensation Insurance Fraud Program is in the process of revising regulations. One change is to eliminate the one funding meeting and move to distribute all funding at one annual meeting.

The other change in workers’ compensation regulations allows for an accounting consistency for indirect expenses and brings the accounting methods more in line with other programs.

Ms. Himelblau also reported on the issue raised regarding monetary penalties which are stated in the Penal and the Insurance Code relating to defendants who are convicted of workers’ compensation fraud. “Both statutes clearly state that monetary penalties are to be applied in conjunction with any other penalties provide by law, so they work together,” stated Ms. Himelblau.

Chairperson Zachry commented that he very much appreciated George Fenimore’s, participation, enthusiasm and efforts while serving as a Commission member. At the next meeting in southern California, the FAC will invite Mr. Fenimore to attend and be recognized by the Commission.

Chairperson Zachry extended his appreciation to the working group in the Monterey area, who are trying to identify the issues involved and help with solutions in terms of day laborers, uninsured employers and workers’ compensation to make sure that all of the injured workers get their benefits on a timely and accurate basis.

Chairperson Zachry acknowledged Lance Wong, Head Deputy District Attorney, Los Angeles County, for the recent raid on diagnostic centers. These centers had been billing for services not rendered. It was also noted that the “fraudsters” had been cashing their checks at check cashing services and not through the normal banking process.

Enforcement Branch Deputy Commissioner Banda reported on the monthly interagency meetings. These meetings provide an avenue to discuss common enforcement actions and share information. The department has created Memorandums of Understanding

(MOUs) in order to exchange information with the Franchise Tax Board, Employment Development Department and the Labor Commission.

Bureau Chief Plein remarked that the MOUs with Labor, Department of Industrial Relations, Division of Labor Standards Enforcement are utilized mainly when the Fraud Division accompanies them on sweeps seeking uninsured employers.

Gary Canepa, FAC member joined the meeting via teleconference and Chairperson Zachry requested to proceed.

Donna Gallagher, FAC member who participated in the department's Review Panel process, reported on the review of workers' compensation applications for funding for the 2006/07 fiscal year.

Commission member Gallagher began by providing background on the working group consisting of CDI, FAC and district attorneys who revised the application for funding and it was submitted by the district attorneys requesting funding.

The working group spent considerable time removing redundancies, providing clarity and creating definitions of terms to be used by those district attorneys, who were applying for funds. Furthermore, a review panel guide for application review was also developed in order to assist the Review Panel Members.

In March the department held an Information Meeting for all District Attorneys, in order to take them through the new material, answer questions and assist them with understanding the newly revised application. All counties in attendance were also provided a copy of the Review Panel Guide so the applicants would know in detail what information was expected.

"Twenty-four out of thirty-five applications that I reviewed failed to answer all of the questions or provided the information in an untimely manner. Many of the applications were unresponsive to the questions that were asked. Many had no discernible plan of action. Several counties, actually, their plans of action were we'll prosecute whatever comes in the door. That, to me, does not constitute a plan," stated Commissioner Gallagher.

Additionally, "... the Joint Investigative Plans failed to respond to the requirements and failed to show any true planning as to how they were going to maximize the use of available resources," reported Commissioner Gallagher.

Commissioner Gallagher applauded those counties that did fully respond to the questions in their applications. Additionally, the statistical information provided by CDI and the counties, as well as the presentations and questioning that occurred during the Review Panel meeting, did allow for sound funding recommendations.

Discussion ensued and Vanessa Himelblau, Staff Counsel, remarked that the regulations outline the consequences for submitting an incomplete application.

**Motion**

Commissioner Gallagher made a motion that the FAC recommend to the Fraud Division to place counties on notice that failure to submit a fully completed application in a timely manner may eliminate that county from being considered for funding.

Commissioner Jiles Smith seconded the motion.

**Action**

The motion carried unanimously.

Chairperson Zachry recognized Glenn Shor, Division of Workers' Compensation, for participating in the grant review panel.

Rick Plein, Bureau Chief, Workers' Compensation Program, reported that this year's district attorney funding requests were in excess of \$24 million. "This year, there will not be a 5% reserve, so the entire amount of the assessment for the district attorneys will be distributed," stated Plein.

Bureau Chief Plein read for the record a letter from the Insurance Commissioner, whereby he accepted the funding recommendation of the Review Panel as submitted with a total funding distribution of \$22,650,968.

Each county's funding distribution was then read for the record and a chart depicting the distribution to each district attorney was made available to the attendees.

**Motion**

Commissioner Gallagher made a motion that the FAC give their advice and consent to the Insurance Commissioner's determination for distribution of funding to the counties for fiscal year 2006/07.

The motion was seconded by Commissioner Jiles Smith.

**Action**

The motion carried unanimously.

Chairperson Zachry offered observations on the program. He noted that the exemplary work of the district attorneys and the department have made great progress in terms of fighting fraud, but we still have a long way to go. Another observation from the Chairperson was that the best grant funded programs have excellent leadership, continuity of staff, a working relationship with the Fraud Division, and a balanced caseload. Additionally, these counties perform outreach, maintain a dedicated restitution process (not necessarily through the probation department) and do both criminal and civil prosecutions and utilize the grand jury process.

**District Attorneys**

Gary Fagan, Supervising Deputy District Attorney and the co-chair of the California District Attorney Association, Insurance Fraud Committee, reported that overall, this has been an encouraging year for the program. He noted the real openness and willingness to review the application process and revise it to produce a more meaningful application. The experience was a real cooperative effort.

The district attorneys were grateful the Fraud Review Panel was prepared, and had obviously, taken the time to review and analyze the applications and submit a recommendation. The questions raised by the Review Panelists were fair. Also, having the guidelines available in advance for the first time was a big plus for the district attorneys and for the review panel.

The new on-line fraud reporting, statistical program report being developed is very encouraging. District attorneys put forth the idea and Rick Plein, Dale Banda and Donna Gallagher were very receptive to it and supplied the resources to make it happen. "We think that's a good process," stated Fagan.

For the upcoming year, the grant funded district attorneys will continue to review, refine and improve on key areas and continue to prosecute workers' compensation fraud cases in an appropriate manner that's professional, ethical, and yields significant results.

**Public Comment**

Dina Padilla introduced herself to the FAC and remarked that she had attended a meeting last October and that, to date, no action had been taken on the examples reported. Ms. Padilla has since spoken with two Fraud Division investigators and the deputy district attorney from Sacramento who is in charge of the workers' compensation insurance fraud grant unit. A letter was received by Ms. Padilla from the Sacramento District Attorney's Office stating there was insufficient evidence to move forward.

Ms. Padilla expressed concern that self-insured employers have complete control of their cases. She believes that fraud exists "across the board" doctors, lawyers, judges; and no one responds. Ms. Padilla expressed the need for a forensic audit of self-insured companies to determine how money is provided for prosecution on behalf of injured workers.

Barbara Clark reported on behalf of herself an injured worker. Ms. Clark is a registered nurse practitioner who received a jaw injury. In the year 2000, the Workers' Compensation Appeals Board Judge awarded her life-time medical for all of her injuries that were sustained while working for self-insured Adventist Health System West. As of 2006, Ms. Clark has not received any TTD payments. The original injury occurred in 1994.

Ms. Clark raised the issue as to what was going to be done about this situation. She believes that this is all a racketeering activity and needs to be taken to the federal courts.

Upon entering the meeting location, Ms. Clark was served with 9 restraining orders by Adventist Health System for workplace violence.

LaTrice Holley was injured in 1992 and reports that she has been disabled ever since. In 2004, Ms. Holley was arrested for insurance fraud by an insurer she alleges has committed fraud against her since 1992.

The Department of Insurance informed Ms. Holley that her case was under federal law – ERISA and she needed to contact the U.S. Department of Labor because the department has no jurisdiction.

The next public comment was made by Sandra Wood an ex-employee of Safeway. Ms. Wood remarked that the entire work comp system needs to be completely dismantled and redesigned to be fair to both the employer and the employee.

Rachel Williams addressed the FAC and explained that she has been injured since 2001 while working in a convalescent hospital. For the past five years, Ms. Williams has lived in pain and at this point no surgery has been granted. Currently, she is homeless and her benefits have ceased. She alleges the insurance company continues to bully, intimidate, and harass her.

Shahidah Musewwir (Marie) reported that she has been injured since 2001. Marie read for the record a letter she sent to Senator Torlakson. The letter was very long and continued for about six minutes, which was three minutes past the FAC public comment allotment per speaker. The overview of the remarks is that everyone is involved in some devious collaboration from attorneys, doctors, judges and insurance companies and she wants the FAC to investigate “our” problems.

Joseph Dow was injured at work in 2004. Mr. Dow reported that he has worked his entire life and has no criminal record. He is a master plumber who overcame his initial injury in 1989 in Boston, relocated and continued to work with reasonable accommodation. Three weeks into his employment with Lowe’s as a commercial sales specialist, Mr. Dow was asked to move 8,000 pounds of concrete bags and was re-injured. He was subsequently fired.

Mr. Dow is seeking assistance to resolve this matter.

Nina Bartholomew a friend of LaTrice Holley’s spoke on behalf of her friend of 30 years regarding her federal disability insurance.

Steve Zeltzer remarked that in the past two weeks, an injured worker had committed suicide because he was not getting his drug medication.

Zeltzer commented that the FAC needed to have labor representatives, consumer and injured worker representatives. He alleged that insurance companies were forcing the injured worker to get Social Security Insurance or disability insurance so they would not

have to pay them. The issue is not going away and the first thing is to remove the insurance industry representatives on the FAC.

Sam Gold thanked the FAC for allowing cameras in the meeting. Mr. Gold is the producer of the only television show in California devoted to workers' compensation. Mr. Gold noted that it is not the injured worker causing the high cost in the workers' compensation system; it is the insurers and their refusal to do their job.

Cathon Rhodes Adams reported being injured from a slip and fall in October of 1993. She alleges that even when the QME stated she needed surgery in 1995, she has not received any medical care.

Beverly Schenck addressed the FAC regarding injuries sustained in 1974 and again in 1986. Her employer has noticed her that she is no longer eligible for workers' compensation benefits, but she alleges that she was granted lifetime medical. Ms. Schenck believes she is being taken advantage of by the system.

This concluded the end of public comments.

#### **Motion**

Commissioner Gallagher made the motion for the meeting to adjourn.

Commissioner Smith seconded the motion

#### **Action**

Motion carried. The meeting adjourned at 12:15 p.m.